

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11277 OF 2013

Dr. Shri Sanjeevkumar Jadhav

... Petitioner

Vs

State of Maharashtra through its Secretary
Medical Education and Drugs Department and Ors.... Respondents

Mr.Rahul V. Shinde I/b Mr.Sanjay Kshirsagar for the Petitioner.

Mrs.R.M. Shinde, AGP for the Respondent-State.

**CORAM : S.C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.**

TUESDAY, 18TH DECEMBER, 2018

P.C. :

1 By this Writ Petition under Article 226 of the Constitution of India, the petitioner claims writ of certiorari or an appropriate writ to quash and set aside the Government decision dated 18th April, 2013.

2 By this decision the petitioner says that, favours have been shown to respondent Nos.4 and 5.

3 Then prayer clause (b) is to the effect that respondent Nos.1 to 3 be directed to implement the recommendation dated 18th May, 2011 and the petitioner be appointed on the post of Honorary Assistant Professor, Cardiac Surgery at Sasoon General Hospital, Pune.

4 It is common ground that no writ of mandamus can be issued to appoint somebody. It is further ground that no writ of mandamus can be issued to create a post for somebody, much less, a doctor trained like the petitioner. He may have earned awards for himself and he may be very meritorious, but still we cannot relax the rules and regulations so as to accommodate anybody in Government service and at any time and at any post he wishes and chooses.

5 Precisely what we have discovered further in this Writ Petition that the respondents, particularly, respondent Nos.1 to 3 do not file any affidavit so that when this matter is listed and before different Benches, they can adopt a stand convenient and favourable to the petitioner. They are not keen in disturbing the appointment of respondent Nos.4 and 5, whereas the petitioner is very much keen.

6 Now to accommodate them, except respondent No.4, despite our categorical order of the earlier date, the learned AGP has been instructed to state before this Court that the petitioner is indeed a qualified Cardio Thoracic Surgeon. His services are indeed required. He can be appointed, but for that, an exercise will have to be carried out. That exercise is to allow conversion of certain posts in the Department of Dentistry into Medicine posts and the petitioner can then be appointed to one of these. The Director of Medical Education and Research is unaware of any such vacancy. He has never been apprised of this position. The Departmental Secretary has suddenly been approached by the Dean and that is because we had passed a detailed order on 10th December, 2018. That order reads as under :

“1. The petitioner, at one time, was claiming to be interested in seeking appointment as an Honorary Cardiologist in the B.J. Medical College and Sasson General Hospital. It is a Government of Maharashtra's Hospital and Educational Institution.

2. The petitioner found that he is a qualified Cardio Thoracic Surgeon and the post of the honorary Cardio Thoracic Surgeon was vacant.

3. During the pendency of this Writ Petition, out of the two respondents, the respondent No.4 has ceased to be in employment are the instructions of the learned AGP.

4. The other gentleman Dr.Nityanand Thakur the respondent No.5 has been appointed as an honorary and continue till date on that basis is a notional break every year.

5. It is apparent from the record that being a Government hospital catering to the Pune District and Pune City, which is thickly populated area, the need for such qualified surgeons and doctors is imminent.

6. It is stated on oral instructions that an advertisement was inserted for an appointment of the regular candidates on 22.07.2018 and after the process was complete, a final decision has still not been taken to make appointments to this teaching as also surgical post.

7. We would highly appreciate if the learned AGP takes complete instructions from a high ranking official, particularly the Director of the Medical Education and Research and not leave it to some clerical level officer who has been deputed to this Court to give instructions. Possibly, by incomplete instructions, this gentleman who is present in Court would land the learned AGP in difficulty.

8. We would therefore, place this matter on 17th December 2018 so as to pass final orders. In the event the petitioner has applied, but was not selected, then, the whole petition gets worked out. In the event the petitioner is still interested, then, depending upon the number of posts, fulltime as also honorary, in the event there is any vacancy, the petitioner can still apply, but will have to compete with others. No Writ of mandamus can issued to appoint a person to a public post. The Writ Petition shall be placed under the caption of 'Passing Orders'."

7 In paragraph 7 of this order, we had expressed our displeasure for the Director of Medical Education and Research had never bothered to respond to any notice from the Court nor filed an affidavit. He never gave instructions to the learned AGP, much less, complete. We had only said that in the event the petitioner applied, but

was not selected and is still interested, then, depending upon the number of posts, full time as also honorary, and there being a vacancy, he can still apply. But, we had made it clear that the petitioner will have to compete with others.

8 Now, taking advantage of such an order, the Dean seems to be interested in accommodating and appointing the petitioner. He has, therefore, requested the Secretary in the Department to allow him to convert one post of Assistant Professor on regular contractual basis in the Department of Dentistry, on a temporary basis into the post of Assistant Professor (Regular Contract Basis) in Cardio Thoracic Surgery and if that conversion is permitted, the petitioner -Dr.Sanjeevkumar Jadhav can be appointed.

9 We do not think that even if the posts are on regular contractual basis and to be filled in accordingly, still, the Dean has such absolute authority that he can request the conversion in the above terms. We are also of the opinion that the Secretary is also not authorized so as to grant this conversion as a matter of course. There are rules and regulations in place. Nobody can claim appointment to

public post merely because he is meritorious, qualified and fully eligible. He will have to prove and establish all this by competing with others. In the event there is any conversion and as prayed by the Dean, still the post on regular contractual basis will have to be advertised and all eligible candidates then can apply. Then, there will be an open competition and in the event the petitioner is successful, he can then be considered for an appointment. The right to appoint is not the right ever guaranteed by the Constitution, particularly by Articles 14 and 16 thereof. It is only a right to be considered that is available in terms of the Constitutional provisions and the rules and regulations. Once no appointment order can be made even by directing a conversion and it is entirely a policy decision which will have to be taken by the authorities by considering all the relevant and germane factors, then, this Writ Petition cannot succeed. The petitioner cannot be appointed, even if he wishes to get such an appointment, by a back door method. Secondly, if the petitioner is so interested and eager to render his services, he can always do so as an Honorary Consultant. That is how the rule permits him to be engaged. He cannot get in by a indirect and oblique method, much less appointed as an Assistant Professor in Cardio Thoracic Surgery.

10 The Writ Petition is without merit and is, therefore,
dismissed. There will be no order as to costs.

[SMT. BHARATI H. DANGRE, J.] [S.C. DHARMADHIKARI, J.]