

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

CIVIL WRIT PETITION NO.5651 OF 2019

The State of Maharashtra
Through the Secretary & Ors. ..Petitioners
V/s.
Mrs.Varsha Ghanashyam Gawai .. Respondent

Mr.N.K. Rajpurohit, AGP for the Petitioners.

Mr.V.D. Patil I/b Mr.Yogesh Patil for Respondent No.1.

**CORAM : RANJIT MORE &
SMT.BHARATI H. DANGRE, JJ.**

DATE : 05th JULY 2019

P.C.

1. The present Writ Petition is filed by the State Government assailing the order passed by the Maharashtra Administrative Tribunal, Mumbai in Original Application No. No.801 of 2017 and thereby challenging the judgment dated 16.01.2019. The Maharashtra Administrative Tribunal by the impugned judgment has declared that the petitioner is entitled for continuation of services as a Lecturer (Junior College) for the subject of Computer Science on the establishment of respondent No.3 on payment and self finance scheme till such scheme continues. The Tribunal has directed continuation of the service for

the academic year 2019-2020 on the salary which was given in the last academic session.

2. Perusal of the judgment passed by the Maharashtra Administrative Tribunal reveal that the Tribunal has taken into consideration the factual aspect of the matter. The petitioner before the Tribunal was appointed on consolidated salary of Rs.6,000/- per month in pursuant to an advertisement issued by the respondent No.3. The appointment order was issued on 29.11.2007, initially for the period of three months and subsequently continued for the next two months. From the academic session 2008-2009, the respondent continued to issue an advertisement and the petitioner came to be selected and appointed every academic session and her services came to be continued from 2007 to end of the academic sessions 2016-2017. The case of the respondent as placed before the Tribunal divulge that for the academic session 2017-2018 the respondent No.3 published an advertisement for walk-in interview in which the applicant participated and the interviews for the post came to be conducted on 19.06.2017. The respondent No.3 asserted before the Tribunal that during this interview, the applicant scored less marks and one Ms.Snehal Kangane who came to be selected on merit. This constrained petitioner to approach the

tribunal.

3. The Tribunal considered the entire gamut of the factual aspect and noted the fact that the applicant had worked for 10 years on contractual basis on clear vacancy. It also deliberated on the contention of the respondent that the entry was a back door entry and noted that infact advertisement had been published and the petitioner was considered on her merits and since she possess the requisite qualification, she was continued for the period of 10 years.

The Tribunal extensively referred to the legal position prevailing in this regard. It made reference to the judgment of this Court in case of *Rajendra S/o Vitthalrao Kamble V/s. Government of Maharashtra & Ors.*¹ where it is held if there exists a post in a cadre, the Government is expected to fill up the post by appointing a permanent employee and this may call for regular selection process. In the meantime, it may be necessary to make ad-hoc or temporary appointment but such on ad-hoc or temporary employee cannot be replaced by another ad-hoc or temporary employee but can be replaced only by a regularly selected employee. It also referred to the judgment in case of *Mohd. Abdul Kadir and Another V/s. Director General of Police*² where the Apex Court has frowned

1 2012 (4) All MR 293

2 2009-6-SCC-611

upon artificial breaks in service. It also made reference to the Division Bench judgment in case of *Ajay Ghatole & Ors. V/s. State of Maharashtra & Ors*¹ and *Sachin Dhawale & Ors. V/s. State of Maharashtra*². The High Court in the said judgment had an opportunity to deal with the similar issue pertaining to the lecturers of the Engineering Colleges who came to be recruited on contractual basis on a fixed salary and continued to remain in service for the period of more than 7 years. After making reference to the judgment of the Hon'ble Apex Court *Radha Dueby V/s. Government of NCT of Delhi*, where the Apex Court deprecated the practice of continuing the appointment for a considerable length of time, the Division Bench of the Bombay High Court directed the regularization/absorption of the lecturers working in the Engineering Colleges though appointment was under the caption of "contractual basis". The said judgment was assailed before Apex Court and the SLP filed by the State Government came to be dismissed.

4. The Tribunal has also placed reliance on the judgment of the Apex Court in case of *Mohammed Abdul Kadir & Anr. V/s. Director General of Police (Supra)* dealt with the issue of staff

1 Writ Petition No.9539 of 2012

2 Writ Petition No.2046 of 2010

appointed against a particular scheme which was temporary in nature and it was held that as well as the scheme is continued, the appointments should continue and it should not be subjected to artificial breaks, though it was held that termination could be affected on ground of misconduct.

By applying the aforesaid legal principles holding the field, the Tribunal has granted relief in her favour, which we have referred to above.

5. We do not find any perversity or illegality in the order passed by the Maharashtra Administrative Tribunal. In such circumstances, the Writ Petition filed by the State Government deserves to be dismissed and it is accordingly dismissed.

(SMT.BHARATI H. DANGRE, J.)

(RANJIT MORE, J.)