

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

CIVIL WRIT PETITION NO.11440 OF 2018

Dr.Manisha V. Gaikwad
(Suryawanshi) & Ors.

..Petitioners

V/s.

The State of Maharashtra
Through Principle Secretary & Ors.

.. Respondents

Mr.Mukesh Talsania I/b Mr.Ravi Irle for the Petitioners.

Mrs.M.P. Thakur, AGP for the Respondent-State.

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

DATE : 05th JULY 2019

P.C.

1. The petitioners working in Group “A” Class-II Medical Officers in Public Health Department, Government of Maharashtra in the Employees State Insurance Scheme under the Maharashtra Medical Insurance Services have approached this Court seeking implementation of the Notification issued by the Public Health Department in form of the Medical Officer in Maharashtra Medical Insurance Services Group-A and Group-B (Gazetted) (one time absorption of Medical Officers appointed in Maharashtra on ad-hoc basis) (Special) Rules of 2014.

2. The short grievance raised by the petitioners is that they have been recruited in Group-A Category as Medical Officers and the appointment was for limited period of 11 months with the artificial, break being given and subsequent thereto, their services continued on the same terms and conditions till date.

The petition proceed to state that the State Government through the Public Health Department had issued Notification on 18.03.2015 in exercise of powers conferred by proviso to Article 309 of the Constitution of India and framed the Rules of 2014 (aforesaid Rules) as a mode of one time absorption of the Medical Officers working on ad-hoc basis in the Medical Insurance Services of the Government of Maharashtra. The said Rules, permit absorption of the Medical Officers who are working on ad-hoc basis and who have completed three years services as on 31.03.2013, to be absorbed and the petitioners are seeking implementation of the said Rules.

3. We have heard learned counsel for the petitioners and learned AGP appearing for the respondents. The respondent has placed on record the affidavit filed by the Chief Administrative Officer, ESI Scheme dated 25.06.2019. The said affidavit do not dispute the framing of the Rules but it proceeds to state that the said Government Notification dated 18.03.2015 on which the petitioners

are placing reliance seeking their absorption is subject matter of the Writ Petition instituted in this Court as well as one Original Application filed before the Maharashtra Administrative Tribunal.

The affidavit proceed to state that the Writ Petition challenges Sub-Clause-(i), (ii), (v) and (vii) of Clause-3 of the said Notification and the original application poses a challenge to the condition of submission of the indemnity bond. The affidavit therefore, proceed to state that since the petition and original application are pending, the petitioners cannot be absorbed.

4. We have considered the said affidavit. On perusal of the Rules framed by the State Government, it is clear that the said Rules have been formulated as a one time measure for absorption of those Medical Officers who have been appointed under the ESI scheme under the Public Health Department on ad-hoc basis. Perusal of the said Notification would also disclose that, Clause-3 of the said Notification impose certain conditions which include the condition of fixing of the initial Basic pay of an ad-hoc Medical Officer at the minimum pay applicable to the category on which he/she is likely to be absorbed. The clause also contain the stipulation to the effect that the services rendered by the ad-hoc Medical Officers prior to the date of absorption shall not be

considered for pay, pension, leave and grant of promotion as a specialist or any other post under the Assured Career Progression Scheme. It also contemplates that the Medical Officer who is to be absorbed would submit an indemnity bond accepting the terms and conditions.

5. The learned counsel for the petitioner has invited our attention to the indemnity bond which is executed by the petitioners accepting the terms and conditions mentioned the Clause-3 of the Notification dated 18.03.2015. The Writ Petition and the original application filed before the Maharashtra Administrative Tribunal which has been put before us as an impediment in absorbing the petitioner infact challenges this conditions. It appears that the Writ Petition and original application are filed by certain employees who could have been otherwise benefited by the said Notification but who are aggrieved by the imposition of the stipulation in Clause-3 of the Notification. In any contingency the petitioners have agreed to abide by the terms and conditions of the Notification issued ensure that the ad-hoc employees who are working as Medical Officers for more than three years, as one time measure need an absorption, subject to the conditions stipulated in Clause-(3). We see no difficulty as to why the claim of the petitioners can not be

considered by the State Government. The affidavit which is only an excuse in form of the pendency of the original application and Writ Petition before this Court do not justify the State Government not implementing its own policy contained in the Notification dated 18.03.2015 when there is no interim order passed and specifically when it is issued in exercise of the powers conferred under the proviso of the Article 309 of the Constitution of India.

6. In view of the aforesaid reasons, we deem it fit to direct the respondent to implement the Notification dated 18.03.2015 and abide by the same by absorbing the petitioners who have already submitted the indemnity bond accepting the terms and conditions contained therein.

Since, we have noted that the conditions contained in Clause-3 of the Notification are subject matter of Writ Petition pending before this Court and an original application, without going into the merits of the challenge to the policy of the State Government contained in the Notification dated 18.03.2015, we direct the respondent to implement its policy qua the present petitioners who are ready and willing to abide by the terms and conditions. The absorption of the petitioners will be subject to outcome of the said Writ Petition as well as the original application

and in case the said stipulations are relaxed in the said pending proceedings, needless to say that the petitioners will also be benefited. In such circumstances, we allow the Writ Petition in terms of the prayer clause (a) and we direct the respondent to complete the exercise of the absorption of the petitioners within a period of four weeks from today, subject to compliance of the requirement of completion of service of 3 years as on 01.01.2014 as per requirement of the notification.

(SMT.BHARATI H. DANGRE, J.)

(RANJIT MORE, J.)