

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

**WRIT PETITION NO.8781 OF 2018**

|                                        |               |
|----------------------------------------|---------------|
| Dr. Seema Ramesh Jadhav,               | ]             |
| Age – Adult, Occ: Service,             | ]             |
| Residing at: C-2, 902, Madhav Sankalp, | ]             |
| Khadakpada, Kalyan (West),             | ]             |
| Dist: Thane, Pin Code: 421 301         | ]             |
| Mumbai – 400 083                       | ]..Petitioner |

Versus

|                                                     |                |
|-----------------------------------------------------|----------------|
| 1] Kalyan Dombivali Municipal Corporation,          | ]              |
| Through Municipal Commissioner,                     | ]              |
| Shankarrao Chowk, Near Dena Bank,                   | ]              |
| Kalyan (West), Maharashtra – 421 301.               | ]              |
| <br>2] State of Maharashtra,                        | <br>]          |
| Through Secretary, (UD-2),                          | ]              |
| Urban Development Department 4 <sup>th</sup> Floor, | ]              |
| Mantralaya, Mumbai – 400 032                        | ]..Respondents |

Mr. Abhijeet Desai I/by Desai Legal a/w Ms. Vrushali Miandad,  
Advocate for the Petitioner.

Mr. A. S. Rao a/w Mr. Prashant Kamble, Advocate for Respondent  
No.1 – KDMC.

Mr. P. G. Sawant, AGP for Respondent No.2.

**CORAM : B. R. GAVAI &  
N. J. JAMADAR, JJ.  
DATE : 18<sup>th</sup> JANUARY, 2019**

**ORAL JUDGMENT (Per B. R. Gavai, J)**

**1]** Rule. Rule made returnable forthwith. Heard by consent

of the parties.

2] The Petitioner has approached this Court, basically praying for absorption and regularization of Petitioner on the post of General Medical Officer and grant her permanency.

3] In pursuance to the advertisement dated 10<sup>th</sup> July 2012, vide which the Respondent – Municipal Corporation had invited applications for appointment of various posts purely on contractual basis for a period of six months, the Petitioner had applied and was appointed vide order dated 17<sup>th</sup> July 2012. The Petitioner has been given extension from time to time and is still in service of the Respondent – Municipal Corporation. However, the Respondent – Municipal Corporation on 19<sup>th</sup> November 2015 had called applications for filling up regular posts of the Medical Officer.

4] It appears that various Medical Officers, who were continued on contractual basis approached this Court by way of Writ Petition No.12626 of 2015 and connected Writ Petitions. The Division Bench of this Court vide judgment dated 21<sup>st</sup> April 2017 disposed of those Petitions. The Division Bench vide an elaborate

order has observed thus :-

“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 forgo their claim for backwages/past salaries. They would be granted continuity in service and benefit in service, if appointed, and this process to be completed within three months.”

5] It could thus be clearly seen that the Division Bench has directed the Respondent – Municipal Corporation to consider the Petitioners therein against the vacant posts. It is further directed that in the event the Petitioners are otherwise found eligible, the

appointment orders be issued to them. The Court also recorded the statement of the Petitioners therein that they will forgo their claim for backwages/past salaries.

6] To a pertinent query, Mr. A. S. Rao, learned counsel appearing for Respondent – Municipal Corporation submits that the general body of the Respondent – Municipal Corporation has passed a resolution for implementation of the aforesaid judgment and regularization of services of the Petitioners therein. He however submits that a reference has been made by the Commissioner under Section 451 of the MMC Act to the State Government. He submits that the State Government has informed the Municipal Corporation to take a decision as to what course of action it proposes to follow.

7] In that view of the matter as of today, the judgment of the Division Bench of this Court dated 21<sup>st</sup> April 2017 in Writ Petition No.12626 of 2015 and connected Writ Petitions holds the field.

8] Ordinarily, we would not entertain the Petition in view of the law laid down by the Hon'ble Apex Court in the case of

**Secretary, State of Karnataka & Others Vs. Umadevi & Others<sup>1</sup>.**

However, we find that co-ordinate bench of this Court in identical facts has taken a particular view. The Petitioner herein who is similarly circumstanced, cannot be denied the same relief.

9] In that view of the matter, we are inclined to allow the Petition. Rule is accordingly made absolute. We direct the Respondent – Municipal Corporation to consider the claim of the Petitioner alongwith the Writ Petitioners in Writ Petition No.12626 of 2015 with companion matters and if the Petitioner is otherwise eligible, issue appointment order to her.

10] Needless to state that as has been held by learned Judges in the aforesaid Petition, in the event the Petitioner is appointed, the Petitioner would forgo her claim for backwages/past salaries.

**[N. J. JAMADAR, J.]**

**[B. R. GAVAI, J.]**

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1 (2006) 4 SCC 1.