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

PUBLIC INTEREST LITIGATION NO. 43 OF 2018

Mr. Sanjay Dinanath Tiwari

... Petitioner.

V/s.

The State of Maharashtra and Ors.

... Respondents.

Mr. Rajaram Bansode for the Petitioner.

Mr. M.M. Pabale, AGP for Respondents 1 to 3.

Mr. Anjani Kumar Singh I/b. M/s. D.S. Law Bureau for Respondent No.10.

***CORAM : NARESH H. PATIL, C.J. &
N.M. JAMDAR, J.***

DATE : 8 FEBRUARY 2019.

P.C. :-

The Petitioner claiming to be a social worker has filed a Petition on 8 December 2016. The Petition was first listed before the Court on 21 July 2017. On that date as none appears on behalf of the Petitioner, the matter was adjourned for four weeks. Thereafter, the matter was heard on 6 October 2017, on which date the Petitioner was directed to remove the office objections. The learned Advocate appearing for the Respondents raised an issue of

maintainability as a preliminary issue which was to be heard on the next date. The matter was thereafter circulated and accordingly, the matter was appeared on 7 February 2019. As the learned AGP was to take instructions, it was adjourned to 8 February 2019 i.e. today.

2. The learned AGP on instructions from the Officer of Mantralaya who is present in Court, makes a statement that according to the directions issued by the Maharashtra Administrative Tribunal, the fresh process was initiated and by a communication dated 19 July 2012, the Secretary, Medical Education was accordingly informed that the Respondent No.10 was found eligible.

3. Against the judgment and order dated 20 July 2011, passed by the Maharashtra Administrative Tribunal in Original Application No. 444 of 2010 filed by Dr. (Vaidya) G.J. Mukkawar, challenging the order dated 12 August 2008 whereby the promotion of the Respondent No.10 was cancelled, a Writ Petition came to be filed by the Respondent No.10. The Division Bench of this Court had admitted the Writ Petition but refused to grant interim relief by an order dated 8 September 2011. The hearing of the Petition was expedited.

4. The learned Counsel appearing for the Petitioner submits that as a common citizen, the Petitioner after making

enquiry and collecting necessary material came to know that the promotion of the Respondent No.10 was made contrary to the rules, regulations, record and the observations made by the Maharashtra Administrative Tribunal. Such persons, if allowed to continue in service, would reflect on the efficiency of the administration. Therefore, the Petitioner decided to raise the issue by filing a Petition in the Public Interest. The learned Counsel further submitted that in the year 2016, a representation was addressed to the high dignities and a copy was served to the concerned authority but so far he has not received any reply. Copy of such representation is annexed at Exhibit 'B' to the Petition. The learned Counsel therefore submits that a cognizance be taken and accordingly appropriate orders be issued in accordance with the prayers made in the Petition.

5. The learned Counsel appearing for the Respondent No.10 submitted that in accordance with the directions issued by the Tribunal, fresh exercise was undertaken by the concerned Authority. The Respondent No.10 participated in the selection process for the promotional post alongwith the other candidates. He was found suitable and accordingly recommendation made and he has been discharging the duties on the promotional post nearby 6 to 7 years. He also submits that so far non has challenged his selection process including persons who had participated in the selection process. The learned Counsel further submits that in the past two years, several

attempts were made to challenge his appointment and he had to face litigation. The learned Counsel further submitted that as a principle of law, plea of Public Interest Litigation shall not be entertained in the service matters. Much less, in the facts of the present case, such a Petition shall not be entertained.

6. We have perused the record and considered the submissions advanced.

7. This Petition is being argued on behalf of the Petitioner near about six years after the selection of the Respondent No.10 to the promotional post was made and the Respondent No.10 had already started functioning as a Director since then. Nothing is brought on record to show that any of the participants during the selection process approached the Courts of law raising challenge to the selection of the Respondent No.10.

8. It is pertinent to note that the Medical Education and Medicine Drugs Department, by order dated 23 November 2012, appointed the Respondent 10 - Mr. Kuldeep Raj Kohli on promotional post. It is clearly mentioned in the said order that the appointment of Respondent No.10 will be subject to the outcome of the Writ Petition No.8452 of 2004.

9. In the facts of the case, we are not inclined to entertain this Petition. The PIL Petition raises issues relating to the service matter.

10. For the above cited reasons, the Public Interest Litigation stands rejected.

N.M. JAMDAR, J.

CHIEF JUSTICE