

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Civil Application (CAW) No.1596 of 2019

In

Writ Petition No.4381 of 2016

Dr. Vaishali D/o Harinarayan Badiye and another

Versus

State of Maharashtra and others.

Office Notes, Memoranda of Coram,
appearances, Court's orders or directions Court's or Judge's orders
and Registrar's order

Shri R.L. Khapre, Advocate for Applicants (Petitioners).

Shri L.M. Acharya, Special Counsel, assisted by Shri S.M. Ukey,
Additional Government Pleader for State- Respondent Nos.1 to 3.

Coram : R.K. Deshpande & Vinay Joshi, JJ.

Dated : 29th August, 2019

1. Heard Shri R.L. Khapre, the learned counsel appearing for the applicants-petitioners; and Shri L.M. Acharya, the learned Special Counsel, assisted by Additional Government Pleader Shri S.M. Ukey, appearing for the respondent- State.

2. This writ petition challenges the judgment and order dated 29-3-2016 passed by the Maharashtra Administrative Tribunal in Original Application No.224 of 2015 rejecting the claim of the petitioners for regularization in service on the posts of Assistant Professors in the Institutes of Forensic Science run by

the State of Maharashtra. The petitioners were working on *ad hoc* basis on these posts in the Institute of Forensic Science at Nagpur and were terminated on 27-4-2015. Alternatively, the claim is to direct the respondents to appoint the petitioners on clock-hour basis during the pendency of this petition.

3. According to the respondents, three Institutes of Forensic Science were established at Mumbai, Nagpur and Aurangabad, and the posts were sanctioned, as per the Government Resolution dated 22-7-2011. The petitioner No.1 was appointed for the Academic Session from October 2011 to 2014-15, whereas the petitioner No.2 was appointed for two Academic Sessions, i.e. for 2013-14 and 2014-15, in the Institute of Forensic Science at Nagpur. The appointments were purely on *ad hoc* basis and a consolidated salary of Rs.24,000/- per month was paid.

4. In order to make regular recruitment to 23 sanctioned posts of Assistant Professors in all the three Institutes, the advertisements were published on 29-7-2013 and 28-2-2014, which included the posts of Assistant Professors held by the petitioners, in the Institute of Forensic Science at Nagpur. The petitioners also appeared for the screening test/entrance test conducted by the Maharashtra Public Service Commission (MPSC), but did not qualify for the post.

5. The petitioners filed Original Application No.224 of 2015 before the Maharashtra Administrative Tribunal for regularization of their service and it was dismissed on 29-3-2016, which is the subject-matter of challenge in this petition along with the termination of the petitioners effected on 25-4-2015.

6. The matter was admitted by this Court on 24-8-2016. However, there was no interim relief granted to the petitioners. Consequently, the petitioners are out of employment.

7. Some of the similarly situated persons working in the Institute of Forensic Science at Mumbai filed Writ Petition No.4046 of 2015 in the Principal Seat of this Court at Mumbai. Notice was issued for final disposal of the matter and the relief was granted in terms of prayer clause-b2, which sought a direction to the respondents to continue the service of the petitioners in the said petition. Consequently, the petitioners in such petition are continued by virtue of interim order passed by the Bench at the Principal Seat, and though the MPSC selected the candidates to occupy the positions, their appointments are not made. The said interim order continues even till this date.

8. The main contention in this civil application is that the petitioners are entitled to the same relief on parity with the

petitioners in Writ Petition No.4046 of 2015, pending in the Principal Seat at Mumbai. Our attention is invited to the order dated 16-8-2017 passed by this Court, wherein it was directed that the vacancy, if any, shall not be filled in until further orders. Our attention is also invited to the order dated 31-10-2017 passed by this Court in this petition, taking note of the contention of the petitioners that there are three vacancies in which the petitioners can be allowed to continue on parity. This Court directed the petitioners to make the representation and the respondent No.2 was directed to look into the matter and pass an appropriate order within a period of four weeks.

9. No doubt, that because of the interim order passed by the Bench at Principal Seat, the counter-parts of the petitioners are already working on *ad hoc* basis and though the persons are selected through MPSC, the appointments are not made. However, in the present case, the petitioners were working on *ad hoc* basis in the Institute of Forensic Science at Nagpur and after their termination from service on 27-4-2015, the candidates selected in the regular process through MPSC were appointed on 16-9-2015 and they have joined the post. It is thereafter that the present petition was admitted on 24-8-2016. Probably, the interim relief, either must not have been pressed or considered. The order dated 16-8-2017 was passed by this Court that the vacancy, if any, shall not be filled in until further orders. It is

urged that the order pertains to the vacancies of Assistant Professors all over the State of Maharashtra and three vacancies pointed out to be existing, as recorded in the order dated 31-10-2017, are in the Institute of Forensic Science at Aurangabad. We find that once the posts occupied by the petitioners were filled in at Nagpur, the question of keeping the posts vacant at Aurangabad shall not serve any purpose.

10. In view of above, the civil application is rejected.

11. Keeping in view the aforesaid peculiar position, there is an urgency to decide the matter. Put up this matter for final hearing, by consent of the learned counsels for the parties, on 26-11-2019. By that time, the parties shall complete the pleadings and we propose to dispose of the matter on priority basis. The respondents shall be at liberty to produce the copy of the petition filed at Mumbai and the stand taken and the orders passed therein. They shall also be at liberty to get the orders of Hon'ble the Chief Justice for hearing of these matters together at any place on or before 26-11-2019; in the absence of which, we shall proceed to decide the matter on merits without waiting for the decision in Writ Petition No.4046 of 2015.

(Vinay Joshi, J.)

(R.K. Deshpande, J.)