

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2162 OF 2019

Syed Fayazuddin s/o Syed Zainuddin,
Age 48 years, Occ. Service,
R/o H.No.1-11-152/2, New Nehru
Bhavan, Buddilane, Aurangabad.
Tq. & District Aurangabad.

.. **Petitioner**

Versus

1. The State of Maharashtra,
Through its Secretary,
Drugs & Medicine Department,
Mantralaya, Mumbai-32.

2. The Dean,
Government Medical College &
Hospital, Aurangabad.
(MS)-431001.

.. **Respondents**

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Mr. R.S. Mubashir Ali, Advocate for the Petitioners.
Mr. A.S. Shinde, AGP for the respondent-State.

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**CORAM : SMT. VIBHA KANKANWADI &
Y.G. KHOBRAGADE, JJ.**

DATE : 9th November, 2022

ORAL JUDGMENT:-

Rule. Rule made returnable forthwith. With the consent of the parties taken up for final disposal at admission stage.

2. Heard Mr. R.S. Mubashir Ali learned counsel for the petitioner and Mr. A.S. Shinde learned AGP for the respondents.

3. The petitioner by invoking the constitutional powers of this Court under Article 226 has prayed for issuing directions to the respondent nos.1 and 2 to include his name in the seniority list and appoint him as Class-IV Servant in Govt. Medical College and Hospital, Aurangabad.

4. From the papers those have been produced it can be seen that the petitioner was a temporary employee employed with the Govt. Medical College Hospital, Aurangabad for a period of 29 days by order dated 03.06.1985, certificate to that effect has been produced. Thereafter, it appears that he was not appointed. Similarly situated persons had approached this Court by way of filing writ petition no.2595/1991 which was decided by the Single Bench of this Court on 13.08.2010. Earlier in the same petition the Court had directed the respondent no.1-State to furnish proper seniority list and accordingly compliance was made by the Dean of the Govt. Medical College and Hospital, Aurangabad and then the Court by order dated 05.08.1996 had observed that the said seniority list produced before the Court is approved by the advocates from both the sides. In view of the fact that the grievance as regards the seniority list was concerned did not remain in dispute and thereafter the subsequent developments were taken into consideration with directions that all the applicants before the Industrial Court have been absorbed in the regular service / employment nothing remains to be

adjudicated and accordingly the said writ petitions came to be disposed of. It will not be out of place to mention here that the present petitioner had tried to file an intervention application to the said writ petition, however, it came to be disposed of for non removal of the office objections and then the registration itself was refused. In the same writ petition, it was then observed that the other intervenors should approach the respondent-Govt. Medical College and Hospital, Aurangabad and satisfy the authority to include their name in the seniority list and thereafter if it is found that they are in the seniority list and then they be absorbed but that order was in respect of the other intervenors and not the present petitioner. Learned advocate for the present petitioner submits that the petitioner could not arrange for the money / fees to be given to the lawyer due to which he could not persuade his rights. We cannot go into the past and observe anything in respect of the registration that came to be refused on 13.04.1998. Even after the decision by Single Bench of this Court on 13.08.2010, it appears that the petitioner had not approached the Dean, Govt. Medical College and Hospital, Aurangabad immediately. His first application appears to be of 09.06.2016 and the second was on 02.01.2017. In the affidavit in reply filed by Dr. Venukumar Rangu, Assistant Professor, Govt. Medical College and Hospital, Aurangabad he has raised the objection that the petitioner had not approached the Industrial Court nor even persuaded his intervention application and then there is long

gap of about 30 years. Therefore, the petitioner cannot take disadvantage of his 29 days appointment on temporary basis to have regularisation or even to be included in the seniority list. Reliance has also been placed on the Government resolution dated 25.08.2005 which was in respect of the non regularisation of the temporary posts in view of the Apex Court's decision.

5. Additional affidavit / rejoinder has been filed by the petitioner stating that the intervention application filed by him was rejected on technical grounds, his appointment order was temporary and he is not seeking relief for regularisation but only submitting that the temporary appointment of 29 days on leave vacancy or any other such type of temporary appointment should be continued. Accordingly, it appears that even orally the learned advocate appearing for the petitioner has modified the prayer in his submissions.

6. It can be seen that the petition suffers from delay and laches. The appointment of the petitioner was only for a period of 29 days starting from 03.06.1985. He never approached the Industrial Court and after the refusal of registration of his intervention application in 1998 even till 13.08.2010 there was no attempt made by him to get his application restored and then again approach this Court or to join the petitioners therein. Even after the said order was passed in respect of another intervenor on 13.08.2010, yet taking a similar approach also the petitioner had not made any application till

09.06.2016 to the Dean. When at each and every stage the petitioner has caused delay then his action cannot be justified only on the ground that he is a poor illiterate person. Definitely he could have approached the Legal Services Authority of this Court to have redressal of his grievances and could have sought legal aid. A person cannot seek employment as of right. There is a procedure prescribed for appointment in Government service and therefore there cannot be a short cut to the same. As regards the modified relief is concerned also when there are procedures those have been prescribed, no directions can be given that the petitioner be considered even for temporary appointment.

7. As the petition suffers from delay and laches, it deserves to be dismissed. So also as regards the prayer clause-B is concerned it has been submitted by learned AGP that the seniority list was prepared in the year 1996 itself which cannot be now disturbed. No relief can be so granted. The petition therefore stands dismissed. Rule discharged.

[Y.G. KHOBRADE, J.]

[SMT. VIBHA KANKANWADI, J.]