

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

WRIT PETITION NO. 9427 OF 2022

The State of Maharashtra and Ors.	} }	Petitioner
versus		
Dr. Deepak S/o. Ashokrao Wani and Anr.	} }	Respondents

**WITH
WRIT PETITION NO. 8598 OF 2022**

The State of Maharashtra and Ors.	} }	Petitioner
versus		
Dr. Chandrakant S/o. Dagdu Chapte	} }	Respondents

**WITH
WRIT PETITION NO. 10897 OF 2022**

The State of Maharashtra and Ors.	} }	Petitioner
versus		
Pravin S/o. Vijaykumar Vedpathak and Anr.	} }	Respondents

**WITH
WRIT PETITION NO. 9429 OF 2022**

The State of Maharashtra and Ors.	} }	Petitioner
versus		
Dr. Satyaprakash S/o. Kashinath Balvant and Anr.	} }	Respondents

**WITH
WRIT PETITION NO. 4721 OF 2021**

The Principal, Gramonnati Mandal's B.Ed. College and Anr.	} } }	Petitioners
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versus

Prof. Vaibhav Sahebrao	}	
Phatangare and Anr.	}	Respondents

Mr. N. K. Rajpurohit, AGP for the petitioners (State) in WP/9427/2022 and WP/8598/2022.

Mr. P. G. Sawant, AGP for the petitioner (State) in WP/10897/2022 and WP/9429/2022.

Mr. Pandit Kasar for the respondents.

None present in WP/4721/2021.

**CORAM: DIPANKAR DATTA, CJ. &
MADHAV J. JAMDAR, J.**

DATE: SEPTEMBER 14, 2022

P.C.:

Writ petition nos. 9427 of 2022, 8598 of 2022, 10897 of 2022 & 9429 of 2022:

1. The Maharashtra Administrative Tribunal, Mumbai (hereafter "the Tribunal", for short) disposed of Original Application Nos. 821 to 826 of 2019 by a common order dated 8th January 2020. The said order is challenged in these 4 (four) writ petitions by the State of Maharashtra.
2. We have heard Mr. Rajpurohit, learned AGP for the petitioners (State) and perused the impugned order.
3. The Tribunal was approached by medical officers, who were appointed by the Health Department on ad-hoc basis for a limited period. However, the services of the original applicants were extended from time to time, so much so that some of them had continued for nearly a decade.
4. Since the original applicants were deprived of leave

benefits as well as annual increments, they prayed before the Tribunal that the original respondents (petitioners before us) may be directed to extend leave benefits as admissible under the policy decision dated 1st March 1997 and annual increments for past ad-hoc service rendered by them in the light of the law laid down by the Tribunal, this Court as well as the Supreme Court. A prayer was also made for condonation of the technical breaks in ad-hoc service and that the service rendered on ad-hoc basis may be counted for grant of annual increments as well as Earned Leave.

5. The Tribunal was referred to various judgments and orders passed by the Tribunal as well as by this Court. Its notice was also drawn to Circular dated 28th February 2017 and a Government Resolution dated 11th January 2019.

6. It was urged before the Tribunal that the reliefs as claimed may be granted based on consideration of such judgments and orders, Circular/Government Resolution. Paragraphs 5 and 6 of the impugned order being relevant, are quoted below: -

“5. Thus, being a policy decision the Government has to take considered view in the issue. While doing so the respondents are directed to look into to the judgments referred above of the Tribunal as well as Hon’ble High Court and by the Medical Education and Drugs Department.

6. The respondent no.1 is therefore directed to take suitable policy decision in respect of all the applicants as well as similarly situated persons. All the above Original Applications No.821 to 826 of 2019 are therefore disposed off with the above directions. No orders as to cost.”

7. It appears from the aforesaid excerpt that the Tribunal did not decide any point on merit and left it to the

Government to take an informed decision having regard to the judgments of the Tribunal as well as this Court, which were cited before it. In the absence of a determination of the rival contentions on merit, we do not think that this is an appropriate case where we should embark upon a thorough examination of such contentions while entertaining these writ petitions.

8. We may note that Mr. Rajpurohit has urged us to dismiss the original applications instituted before the Tribunal based on the decision dated 7th April 2017 of a coordinate Bench of this Court (Bench at Nagpur) in Writ Petition No. 4969 of 2011 (**State of Maharashtra and Ors. vs. Dr. Jyotsna Shamrao Potpite and Anr.**). It is true that the Bench upset the order of the Nagpur Bench of the Tribunal and dismissed the original application, which was filed by the respondent no. 1/Jyostna Potpite claiming increments and other benefits, on the ground that only regular employees are entitled to the same.

9. We do not see any reason as to how this particular decision can be pressed into service by Mr. Rajpurohit for reversal of the order impugned in the absence of the judgment/order dated 7th April 2017 being brought to the notice of the Tribunal when it proceeded to dispose of the original applications before it.

10. That apart, we cannot ignore that the coordinate Bench (Bench at Nagpur) while deciding **Dr. Jyotsna Potpite** (supra), did not have the occasion to consider the other coordinate Bench decision dated 27th November 2008 of this Court (Bench at Aurangabad) in Writ Petition No. 3484 of 2005 (**State of Maharashtra vs. Sangita Raghvir**

Phatale). We are, therefore, not persuaded to follow the decision in **Dr. Jyotsna Potpite** (supra) at this stage.

11. Mr. Rajpurohit complains that the Tribunal did not give an opportunity to the State to file reply affidavit. Such a submission is hardly relevant having regard to the fact that the Tribunal has not passed its order on the merits of the rival contentions.

12. In such view of the matter, we are of the opinion that the Government ought to implement the order of the Tribunal. We make it clear that all contentions on merit are left open for being looked into by the State for taking an appropriate decision on the basis of the judgments and orders which are governing the field, within three months from date.

13. With the aforesaid observations, the writ petitions stand disposed of. No costs.

Writ Petition No. 4721 of 2021:

14. This writ petition is de-tagged from the aforesaid group of writ petitions and may be heard separately.

SALUNKE
J V

Digitally signed
by SALUNKE J V
Date: 2022.09.15
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(MADHAV J. JAMDAR, J.)

(CHIEF JUSTICE)