

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR
WRIT PETITION NO. 3295 OF 2022

(Vinayak s/o Govind Lande & Ors. Vs. State of Maharashtra & Anr.)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri R.D. Karode, Advocate for the petitioners.
Ms. T.H. Udeshi, Assistant Government Pleader for the respondents/ State.

CORAM : A. S. CHANDURKAR AND ANIL L. PANSARE, JJ.

DATE : NOVEMBER 23, 2022.

Heard.

Pursuant to the policy of the State Government through its Tribal Development Department dated 6/3/2018, it was resolved to fill in the posts of Sports Teacher/ Sports Coach in Government Ashram Schools on contractual basis. By the said Government Resolution, a three member Committee was constituted for each District in the State. The said Committee was assigned the task of selecting candidates for being appointed on contractual basis for a period of 11 months on consolidated amount of Rs.25,000/- per month. The appointment was to be on contractual basis and it was stipulated that the appointment could be further extended for a period of 11 months subject to such appointment being made for a maximum of three occasions. It is the case of the petitioners that pursuant to an advertisement issued in the year 2018, they had responded to the same and were selected as Sports Teacher/ Sports Coach. The orders of appointment on contractual basis for a period of 11 months came to be issued to them. On completion of initial period of 11 months, the petitioners were again appointed on 2/8/2019 and thereafter on 3/12/2021. The District Selection Committee under the Tribal Welfare Department issued fresh advertisement on 8/6/2022 inviting applications for fill in the said posts on contractual basis for a period of 11 months. Being aggrieved by the issuance of the said advertisement, the petitioners have challenged the same in the present Writ Petition.

The learned Counsel for the petitioners submitted that it was not permissible for the Tribal Development Department to replace the petitioners

who were contractually appointed by making fresh appointment of others on contractual basis. The petitioners were entitled to be further continued on the post held by them and there was no reason to discontinue their services. The petitioners had discharged their duties in a satisfactory manner and in view of the settled law, it was not permissible to replace one contractual appointee by another. To substantiate the said contention, the learned Counsel placed reliance on the decisions in i) *Secretary, State of Karnataka And Others Vs. Umadevi (3) And Others [(2006) 4 SCC 1]*; ii) *Mohd. Abdul Kadir And Another Vs. Director General of Police, Assam And Others [(2009) 6 SCC 611]*; iii) *Ajay s/o Ashokrao Ghatole and others Vs. State of Maharashtra and others [2014(6) Mh.L.J. 458]*; iv) *Atma Employee's Welfare Association Vs. The Union of India & Ors. [Writ Petition No. 5060/2015 d/o 24/8/2016]*; v) *The State of Maharashtra Vs. Mrs. Varsha Ghanashyam Gawai [Civil Writ Petition No. 5651/2019 d/o 5/7/2019]*; vi) *Manish Gupta & Anr. Vs. President, Jan Bhagidari Samiti & Ors. [2022 LiveLaw (SC) 406]*; vii) *Abhinav Chaudhary & Ors. Vs. Delhi Technological University & Anr. [Writ Petition (C) No. 3512/2014 d/o 20/1/2015]* and viii) *Prajapati Hitesh Mohanlal & Ors. Vs. State of Gujarat & Ors. [2016 SCC OnLine Guj 6736]*. It was thus prayed that the advertisement dated 8/6/2022 be set aside and the petitioners be continued to discharge their duties on contractual basis.

The learned Assistant Government Pleader appearing for the respondents opposed the aforesaid submissions. Relying upon the affidavit-in-reply placed on record, it was submitted that under the Government Resolution dated 6/3/2018, the initial appointment on contractual basis was for a period of 11 months and such appointment could be extended periodically for maximum three times. After the petitioners' appointments, they had signed an agreement and had accepted their contractual appointments. It was not permissible for them to urge that the agreement signed by them was not binding. Since the petitioners had been appointed on contractual basis on three occasions, they were not entitled to pray that their engagement be continued. It was thus submitted that the petitioners were not entitled for any relief whatsoever.

We have heard the learned Counsel for the parties and we have perused the documents on record. It is undisputed that the petitioners came to be appointed on contractual basis in view of the policy contained in the Government Resolution dated 6/3/2018. Under that Government Resolution, it has been stated that the appointment of Sports Teacher/ Sports Coach was to be on contractual basis initially for a period of 11 months. On there being any need, the period of 11 months could be extended for a further period of 11 months at a time. Such appointment of a candidate could be for maximum three times and if re-appointment was sought, it was necessary for such candidate to undergo fresh selection process. It is also not in dispute that the petitioners were initially appointed on 15/11/2018 for a period of 11 months. Fresh appointment was again granted on 2/8/2019 for a period of 11 months and yet another appointment was made on 3/12/2021. It is thus clear that on three occasions, orders of appointment for a period of 11 months each came to be issued to the petitioners. In terms of the Government Resolution dated 6/3/2018, the petitioners having been engaged on three occasions, they would be required to undergo fresh recruitment process as prescribed. The said Government Resolution dated 6/3/2018 on which the petitioners seek to rely has not been challenged by them nor is the outer limit of three engagements imposed by that Government Resolution under challenge. In absence of any challenge to the policy, it would not be permissible for the Court to direct the respondents to act contrary thereto and continue engagement of the petitioners on contractual basis in breach of the Government Resolution dated 6/3/2018. The principle of law relied upon by the petitioners that a contractual appointee should not be replaced by another contractual appointee would be a matter to be considered had the policy dated 6/3/2018 been subjected to challenge. In absence of any such challenge, the petitioners would be bound by the agreement signed by them while being appointed on contractual basis. Having accepted appointment as stipulated by the said Government Resolution as well as the orders appointing them on contractual basis by signing the agreement, the petitioners would be precluded from turning around and praying that they be further continued on contractual basis. In terms of Clause 4(4) of Government Resolution dated

6/3/2018, they are entitled to seek re-appointment on contractual basis subject to undergoing the selection process. This requirement appears to have been introduced keeping in mind the fact that the post is of Sports Teacher/ Sports Coach. It is for this reason that we are not inclined to issue direction that would run contrary to the Government Resolution dated 6/3/2018 and direct re-engagement of the petitioners on contractual basis. The ratio of the decisions relied upon by the learned Counsel for the petitioners cannot be disputed. However, the facts of the present case preclude us from applying that ratio here. The Government Resolution dated 6/3/2018 itself imposes the limit of such engagement to three. In absence of any challenge to the said Government Resolution, the ratio of the said decisions cannot be applied.

For the aforesaid reasons, we do not find that the petitioners are entitled to any relief. By observing that the petitioners are entitled only for those rights that are provided by the Government Resolution dated 6/3/2018 of contractual appointment on a maximum of three occasions, the Writ Petition stands dismissed with no order as to costs. It is clarified that it would be open for the petitioners to participate in fresh selection process as and when the same is undertaken by the respondents.

(ANIL L. PANSARE, J.)

(A. S. CHANDURKAR, J.)

SUMIT