

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

WRIT PETITION NO. 2402 OF 2021

Dr.Ravi K. Tale and Ors.

..... Petitioners

Vs.

The State of Maharashtra and Ors.

..... Respondents

Mr.Kranti L.C. for the Petitioners

Mr.B.V.Samant, A.G.P. for the State

**CORAM: S.V.GANGAPURWALA, ACJ &
SANDEEP V. MARNE, J.**

DATED : FEBRUARY 28, 2023

P.C.

1 The Petitioners seek direction to forthwith allow the Petitioner Nos.1, 5, 7, 8, 9 and 10 to resume their services at the Health Facilities, where they were originally posted at and terminated from, so also, for the relief challenging the letter dated 05.01.2021 to the extent that it provides for dispensing with the Petitioners services on the resumption of duty by a regular Government candidate at the said post. Further directions were sought with regard to the remuneration.

2 Earlier, the Petitioners had filed Writ Petition No.5119 of 2019. The Division Bench of this court under order dated

11.08.2020 disposed of the Writ Petition with certain directions. This Court, under the said judgment, set aside the order of termination of the Petitioners. It was further observed that if the National Health Mission has been extended beyond 31.03.2020 there being admittedly requirement of 44 contractual dental surgeons, there can be no justifiable reason to discontinue the contractual employment of the Petitioners and at the same time, to hold a recruitment process for selecting and appointing another set of contractual dental surgeons replacing the Petitioners. The court also observed that the ad-hoc or temporary employee cannot be replaced by another ad-hoc or temporary employee. He must be replaced only by a regularly selected employee.

3 The learned Counsel for the Petitioners submits that the Petitioners were reinstated in service. They were posted at far away place and not at the place they were appointed earlier. The learned counsel submits that remuneration has also been scaled down to Rs.30,000/- pm. The Petitioners were earlier receiving more than Rs.38,000/- pm. The learned counsel submits that rationalization will have to be applied for the said purpose. The learned counsel placed reliance upon the communication dated 05.10.2020.

4 The learned A.G.P. submits that particular budget is provided for appointment under National Health Mission. Post is also earmarked. If the Petitioners are to be paid more, then budgetary provision would go haywire. Payment certainly will have to be made in tune with the policy as is spelt-out under communication dated 05.10.2020 (page 233).

5 As far as posting of the Petitioners at a particular place is concerned, the same would be in tune with the availability of the work. If the work is available at the place where the Petitioners were originally appointed, the Petitioners would represent the authority in that regard. The authority would consider the said representation in its correct perspective. The Petitioners cannot claim posting by replacement of regularly appointed candidates.

6 Be that as it may, in the earlier round of litigation, the order is already passed by this Court directing that the Petitioners cannot be replaced by other contractual employees. The said order holds the field and has become final. Respondents shall pay the salary to the Petitioners in tune with the policy as is communicated under order dated 05.10.2020 (page 233) from the date the Petitioners are reinstated. Arrears be paid within a period of four months.

7 Writ Petition is disposed of.

(SANDEEP V. MARNE, J)

(ACTING CHIEF JUSTICE)